

(5) If the request requires the rendering of services for which fees may be charged under title 5 of the Independent Offices Appropriation Act in accordance with DoD Instruction 7230.7<sup>10</sup> the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action upon the request.

(6) A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this part, the requester shall be notified of the reasons therefor. If so requested, an appellate authority shall communicate its determination to any referring DoD Component or outside agency.

(7) The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

(f) *Foreign Government Information.* Requests for mandatory review for the declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to § 159a.76(c).

(g) *Prohibition.* No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this part.

(h) *Restricted Data and Formerly Restricted Data.* Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Re-

stricted Data" must be coordinated with the Department of Energy.

**§ 159a.27 Declassification of transferred documents or material.**

(a) *Material Officially Transferred.* In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(b) *Material Not Officially Transferred.* When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of paragraph (a) of this section, or when it is impossible to identify the originating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

(c) *Transfer for Storage or Retirement.* Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARA for permanent

<sup>10</sup>See footnote 1 to § 159a.3

preservation. Any downgrading or declassification determination shall be indicated on each document by markings as required by subpart E of this part.

#### § 159a.28 Downgrading.

(a) *Automatic Downgrading.* Classified information marked for automatic downgrading in accordance with this or prior regulations or E.Os. is downgraded accordingly without notification to holders.

(b) *Downgrading Upon Reconsideration.* Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

#### § 159a.29 Miscellaneous.

(a) *Notification of Changes in Declassification.* When classified material has been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall ensure prompt notification of all holders to whom the information was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify holders to whom they have transmitted the classified information. See § 159a.34 (a) and (e) for markings and the use of posted notices.

(b) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing twenty years after the event, DoD Components shall assist the editors in the Department of State by easing access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for possible publication.

(c) *Reproduction for Declassification Review.* The provisions of § 159a.55(f) shall not restrict the reproduction of documents for the purpose of facilitating declassification review under the provisions of this subpart or the Freedom of Information Act, as amended. After review for declassification, however, those reproduced documents that remain classified must be destroyed in accordance with subpart J of this part.

### Subpart E—Marking

#### § 159a.31 General provisions.

(a) *Designation.* Subject to the exceptions in paragraph (c) of this section, information determined to require classification protection under this part shall be so designated. Designation by means other than physical marking may be used but shall be followed by physical marking as soon as possible.

(b) *Purpose of Designation.* Designation by physical marking, notation, or other means serves to warn the holder about the classification of the information involved; to indicate the degree of protection against unauthorized disclosure that is required for that particular level of classification; and to facilitate downgrading and declassification actions.

(c) *Exceptions.* (1) No article that has appeared, in whole or in part, in newspapers, magazines or elsewhere in the public domain, or any copy thereof, that is being reviewed and evaluated to compare its content with classified information that is being safeguarded in the Department of Defense by security classification, may be marked with any security classification, control or other kind of restrictive marking. The results of the review and evaluation, if classified, shall be separate from the article in question.

(2) Classified documents and material shall be marked in accordance with paragraph (d) of this section unless the markings themselves would reveal a confidential source or relationship not otherwise evident in the document, material, or information.

(3) The marking requirements of paragraph (d) (1)(iv) and (2)(iv) of this section do not apply to documents or